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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

October 10, 2012

The Honorable Michael E. Busch
Speaker of the House of Delegates
100 State Circle
Annapolis, Maryland 21401

Re: Delegate Tiffany Alston

Dear Speaker Busch:

You have asked for my legal advice regarding the status of Delegate Tiffany Alston in light of her sentencing for misconduct in office. It is my view that she has now been suspended from elective office by operation of law without pay or benefits.¹

The relevant constitutional provision in pertinent part provides that:

Any elected official of the State ... who during [her] term of office is convicted of or enters a plea of *nolo contendere* to any crime which is a felony, or which is a misdemeanor related to [her] public duties and responsibilities and involves moral turpitude for which the penalty may be incarceration in any penal institution, shall be suspended by operation of law without pay or benefits from the elective office.

Md. Const., Art. XV, §2. On June 5, 2012, Delegate Alston was found guilty by a jury of the crime of misconduct in office. It is my view that this crime is (1) a misdemeanor; (2) related to her public duties; (3) involves moral turpitude;² and (4) carries a potential

¹ Because it is important to provide immediate clarity on the issue of whether Delegate Alston has been suspended, I have provided this advice on an expedited basis and without addressing other potential ramifications of Delegate Alston's criminal case.

² *Stidwell v. State Bd. of Chiropractic Examiners*, 144 Md. App. 613, 618-19 (2002) ("Our review ... reveals that, whereas for trials, the expression "moral turpitude" speaks primarily to truthfulness, for the business of professional licensing and public appointments, the expression strikes the broader chord of public confidence in the administration of government.").

The Honorable Michael E. Busch

October 10, 2012

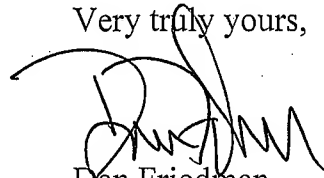
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penalty of incarceration, and, therefore, is a qualifying crime under this provision. A guilty verdict, however, does not become a "conviction" under Maryland law until the time of sentencing. 62 *Opinions of the Attorney General* 365, 371 (1977). As a result, Delegate Alston was allowed to continue in office after she was found guilty. On October 9, 2012, Delegate Alston was sentenced to a term of one year of incarceration, suspended, for this crime. A copy of the certified conviction is attached hereto as **Exhibit 1**. At the moment that sentence was pronounced, the constitutional provision was triggered and Delegate Alston was suspended from her office.

Pursuant to the constitutional provision, during her suspension Delegate Alston is not entitled to the "pay or benefits" of her office. In 1977, Attorney General Burch provided advice about how this provision was to be interpreted during the suspension from office of Governor Marvin Mandel. 62 *Opinions of the Attorney General* 464 (1977). If you need further guidance on how this is to be applied to Delegate Alston, please do not hesitate to ask.

Delegate Alston's suspension from office also triggered the process for appointing a person to temporarily fill her position as a delegate from the 24th legislative district. Pursuant to the Constitution, "[d]uring and for the period of suspension of the elected official, the appropriate governing body and/or official authorized by law to fill any vacancy in the elective office shall appoint a person to temporarily fill the elective office." The authority for filling vacancies in the General Assembly is provided by Article III, section 13, which provides that "the Central Committee of the political party, if any, with which the Delegate ... had been affiliated at the time of the last election" has 30 days to submit a list of names to the Governor from which to select a new Delegate. Thus, the Democratic Central Committee for Prince George's County has 30 days from yesterday to forward the names of potential temporary replacements to the Governor. See Md. Const., Art. III, §13(a). The Governor then has 15 days to select a temporary replacement.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dan Friedman", is written over a horizontal line.

Dan Friedman

Counsel to the General Assembly

Defendant's Name: Anthony Aiston / AKA Anthony A. Gray

Prosecutor: E. Davitt / S. Glenn

Judge: PAUL F. HARRIS, JR

Def. Atty: J. Gordon / R. Abdullah

Case called for: Sentencing

Clerk: Howland Ctrm: 3B

ATN: 11-7002-00049-6

☒ Counsel Heard ☐ Pass for Trial ☐ Reset for Status Conference
☐ Postponement Request by: ☐ State ☐ Defendant ☐ DNA/Forensic Evidence is unavailable
☐ Good Cause found-Granted ☐ Denied ☐ Hicks Waived ☐ Def expressly consents to postponement

Δ waives all appellate rights per plea agreement w/
☐ New Trial / Hrg Date: ☐ Motion Hearing Date: K-11-2040

☐ State moved to place case on Stet Docket - Granted ☐ Defendant Waived Right to Speedy Trial

☐ Advised of Rights (Rule 4-213), referred OPD ☐ Counsel Waived (Rule 4-215)

☐ Defendant not present ☐ Address Verified / Information Sheet Filed

☐ Bench Warrant Issued for Defendant's Failure to Appear

☐ Bond Forfeited - NISI

☐ Bond set at copy of signed plea agreement filed

☐ Defendant appeared later same day

☐ Bench warrant withdrawn; Bond forfeiture stricken and bond reinstated in open court in

☐ Bond set at

Defendant Released on ☐ Personal Recognizance ☐ Pretrial - Level 1 2 3 4 5 K-11-2040

PLEA:

☐ Guilty Count(s)

☐ Not Guilty ☐ Agreed Statement of Facts Count

☐ Advised of Rights

☐ Jury Trial Waived

☒ (Motion for appropriate relief) w/ prejudice
☒ Open Motions Withdrawn

☐ Statement of Facts presented ☐ Via probation report

☐ Testimony taken

Motion for Judgment of Acquittal: ☐ Granted ☐ Denied: Δ served w/ civil

FINDING: COURT/JURY

☐ Not Guilty to Counts

☐ Guilty to Counts

☐ Defendant Guilty-Not Criminally Responsible to Count(s)

☒ Guilty Finding Stricken - Entry of Judgment Stay under Criminal Procedure Article Sec. 6-220(b)

☐ Disposition continued to:

☐ P.S.I. ordered ☐ Special directions:

☐ Court ordered 8-505 evaluation (order in file)

Bond: ☐ Revoked ☐ Remain on same bond

☐ Changed to

Disposition: ☒ County Detention Center

☐ Commissioner of Corrections

for a period of 2-1 year

☒ suspend all but

☐ Credit for time served

Sentence to begin on 20 ☐ Live-in-work-out Ordered/Recommended

☐ Probation continued. ☐ Probation closed - unsatisfactory ☐ DNA Testing by

☒ Defendant placed on Supervised/Unsupervised probation for: 3 years

☐ Successfully complete any drug/alcohol counseling, treatment, education, NA/AA, random urine per P&P

Δ to complete 300 hours of community service at a mutually agreed upon, non-profit, non-government agency.

Probation transferred to PG County

☐ Fine \$

☐ Fine Suspended

☒ Court Costs \$ 145.00

☒ Waived - except for CICF \$ 45.00

☐ Court Costs due

☒ Parole and Probation Fee

☐ P&P Fee Waived

☐ Monies referred to CCU/deemed uncollectible

☒ Restitution

800 to State of Maryland c/o David Friedman office of the Attorney General 90 State Circle Rm 104 Annapolis MD 21401

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